Local 617, International Brotherhood of Teamsters, AFL–CIO[1] *and* Christian Salvesen Distribution Service. Case 22–CB–6734

August 31, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On April 6, 1992, Administrative Law Judge Steven B. Fish issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Local 617, International Brotherhood of Teamsters, AFL–CIO, Jersey City, New Jersey, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Add the following as paragraph 1(b).

''(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to sign the collective-bargaining agreement submitted to us by Christian Salvesen Distribution Service on or about November 8, 1990.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, execute the collective-bargaining agreement submitted to us by Christian Salvesen Distribution Service on or about November 8, 1990.

LOCAL 617, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL–CIO

[1] The name of the Respondent has been changed to reflect the new official name of the International Union.

Bert Dice-Goldberg, Esq., for the General Counsel.
Gary Carlson, Esq. (Schneider, Cohen, Solomon, Leder & Montalbano), of Cranford, New Jersey, for the Respondent.
Michael Barabander, Esq. (Grotta, Glassman & Hoffman, P.A.), of Roseland, New Jersey, for the Charging Party.

DECISION

STATEMENT OF THE CASE

STEVEN B. FISH, Administrative Law Judge. Pursuant to charges filed by Christian Salvesen Distribution Services (the Employer or Charging Party) on March 11, 1991, the Regional Director for Region 22 issued a complaint and notice of hearing on June 28, 1991, alleging in substance that Local 617, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO (Respondent or the Union), violated Section 8(b)(3) of the Act, by failing and refusing to execute a collective-bargaining agreement embodying the terms of an agreement reached with the Employer.

The trial with respect to the allegations raised by the complaint was heard before me on November 18, 1991. Briefs have been filed by General Counsel and Charging Party and have been carefully considered.

Based on my review of the entire record,[1] and my observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

The Employer is a corporation with an office and place of business in Secaucus, New Jersey, where it is and has been engaged in the warehousing and distribution of frozen foods and related products. During the past year, the Employer purchased goods valued in excess of $50,000 directly from suppliers located outside the State of New Jersey. It is admitted and I so find that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

It is also admitted and I so find that Respondent is a labor organization within the meaning of Section 2(5) of the Act.

[1] While every apparent or nonapparent conflict in the evidence may not have been specifically resolved below, my findings are based on my examination of the entire record, my observation of the witnesses' demeanor while testifying, and my evaluation of the reliability of their testimony. Therefore, any testimony in the record which is inconsistent with my findings is discredited.

II. FACTS

For many years, Respondent has been the collective-bargaining representative for the Employer's employees in an appropriate unit of all warehouse employees at its Secaucus facility. The parties have been bound to a series of collective-bargaining agreements, the most recent of which was effective by its terms for the period November 1, 1987, to October 31, 1990.

The parties met during the month of October 1990, to negotiate the terms of a new collective-bargaining agreement. Harold Hoffman, the Employer's attorney, and Joseph Bocchino, its general manager, were present on behalf of the Employer. Respondent was represented by William McKernan, its president, James Ryan, its shop steward, and employee committee members John Lynch and Rafeq Sulih. Pursuant thereto, the Employer submitted Respondent a copy of a draft collective-bargaining agreement on October 9, 1990, which contained the provisions of the prior agreement between the parties, plus several changes that the Employer was proposing.

All these changes were discussed during the course of four collective-bargaining sessions, culminating in an agreement reached on October 31, 1990. On that date, the parties reduced their agreement to a handwritten document. On November 1, 1990, pursuant to Respondent's request, Hoffman prepared and forwarded to Respondent a typewritten Memorandum of Agreement (MOA), which incorporated the agreement reached on October 31, 1990. The MOA recites that the terms were agreed by the parties on October 31, and the Union and its committee unanimously agree to recommend ratification of the agreement to the bargaining unit. The MOA provides that all articles of the Employer's proposed draft contract (submitted to Respondent on October 9) shall be adopted and be effective November 1, 1990, with the exception of 12 modifications or deletions in such areas as seniority, hours of work, sick leave, and holidays.

On November 1, 1990, the employees of the Employer voted to ratify the MOA by a vote of 25 to 2. Thereafter, at the Employer's premises, the MOA was signed by Bocchino on behalf of the Employer and McKernan, Ryan, Lynch, Sulih, and Vincent Gugliano on behalf of the Union. The MOA also reflects the 25–2 vote to ratify the agreement by the Employer's employees at 3:36 p.m., on November 1, 1990.

Thereafter, Hoffman prepared a single document which incorporated the MOA along with the specific terms of the Employer's draft proposals, and forwarded same to Respondent for review with a letter dated November 8, 1990. The letter requests that after the MOA is reviewed, that Hoffman be contacted to arrange a mutually convenient time for execution of the agreement. Neither McKernan nor anyone else from Respondent replied to Hoffman's letter.

On February 11, 1991, Hoffman sent another letter to McKernan, reminding Respondent that it still had not signed the agreement, nor attempted to contact Hoffman about the matter. The letter continues that unless he hears from Respondent by February 22, 1991, he intended to file charges with the Board to see that the agreement agreed to is executed. Charging Party received neither a response to this letter nor an executed copy of the agreement by Respondent.

On March 11, the instant charges were filed. Subsequently, the parties met in an attempt to resolve the matter. At that meeting, Respondent sought to renegotiate certain provisions previously agreed to including holidays and seniority. Although Charging Party did make some concessions, no resolution of the matter was reached at the meeting.

The only witness presented by Respondent was its shop steward, James Ryan. Most of his testimony consisted of rambling, inappropriate and irrelevant attacks on officials of Charging Party concerning matters having nothing to do with the issues at hand. However, Ryan did testify at one point that he wouldn't sign the contract proposed, because he disagrees with the interpretation of certain provisions of the proposed agreement by Charging Party. Additionally, Ryan also contended that at the ratification meeting of the employees, the employees who voted in favor of the agreement, because of language difficulties, did not understand what they were voting for.

III. ANALYSIS

It is well established that the obligation to execute a collective-bargaining agreement encompassing terms agreed on by the parties, which is imposed on employers *H. J. Heinz Co. v NLRB*, 311 U.S. 514 (1941), is also binding on unions, and the failure to do so by a union is violative of Section 8(b)(3) of the Act. *Teamsters Local 70 (Emery Worldwide)*, 295 NLRB 1123 (1989); *Graphic Communications Local 583 (National Press)*, 288 NLRB 284, 287 (1988); *Machinists Local 701 (Avis Rent A Car)*, 280 NLRB 1312, 1315 (1986).

It is also clear that once the parties have executed a MOA, that they are also obligated to execute a full collective-bargaining agreement which incorporates the terms agreed to in the MOA, which include other documents referred to in the MOA. *Fayard Moving & Transportation*, 290 NLRB 26, 27 (1988); *Electrical Workers IBEW Local 1228 (WNAC-TV, WRKO & WROR)*, 230 NLRB 342, 343–344 (1977); *Meat Cutters Local 530 (Duquoin Packing)*, 202 NLRB 478, 483 (1973).

Here, there can be no question that the parties executed an MOA on November 1, 1990, which correctly reflected the parties' agreement, and that the MOA was ratified by the employees. Additionally, Charging Party on November 8, 1990, sent Respondent a full and complete collective-bargaining agreement, which reflected accurately the MOA plus the prior draft agreement previously submitted by Charging Party to Respondent.

The testimony of Ryan, Respondent's only witness, suggests that in his view, no agreement was reached, because the employees due to translation problems, did not know what they were voting for. I find this purported defense to be both factually and legally unsupportable. Thus, even if Respondent established, which it has not, that the employees were confused about the MOA because of language difficulties, this would not establish that no agreement was reached. It is Respondent's responsibility and obligation to assure that its members are able to understand what they are voting for, and it cannot rely on its own failures to comply with this obligation, to justify refusing to execute an agreement with Charging Party, the terms of which were clearly agreed to during negotiations.

Indeed, Respondent has admitted on the record of this proceeding, by its attorney, that the proposed contract submitted to it by Charging Party, correctly reflected the agreement of the parties, i.e., the MOA plus Charging Party's prior pro-

posal. However, Respondent argues that it is not legally obligated to execute the contract submitted for two reasons. First, Respondent asserts that the MOA, constitutes a complete collective-bargaining agreement, and that Respondent by executing the MOA has fully satisfied its obligations under Section 8(d) of the Act. Thus, Respondent argues that it is being asked to sign a contract a second time, which is not required under the Act.

However, whether or not one might construe the MOA as a complete collective-bargaining agreement, Charging Party is entitled to have Respondent execute a single document which incorporates all the terms agreed to by the parties. *Retail Clerks Local 322 (Ramey Supermarkets)*, 226 NLRB 80, 87 (1976); *Summit Tooling Co*., 195 NLRB 479, 480, 488 (1972); *Operating Engineers Local 12 (Tri County Assn.)*, 168 NLRB 173 (1967); *Sears Roebuck & Co*., 139 NLRB 471, 478 (1967); *WNAC*, supra at 343, 344.

The rationale for this result is aptly summarized by the administrative law judge in *Ramey Supermarkets*, supra; ''By its terms, a memorandum is incomplete. By present notation and reference to other material, it serves the parties' immediate purposes to terminate the dispute between them until a more permanent record of their agreement can be prepared. . . . Experience with memoranda shows that, because they are incomplete and sometimes not too clear, they tend to become a source of disagreement and discord unless soon translated into more complete and precise documents.'' Id at 87. Thus, the requirement that Respondent execute a complete and precise document is less likely to result in disagreements with respect to interpretations of their terms.

Moreover, the requirement that Respondent execute the agreement is more appropriate, in view of the position of its shop steward. Thus, it appears from Ryan's testimony in this proceeding, that in his view, and perhaps the view of the other members of the negotiating committee, there is no contract between the parties. While I have rejected Ryan's assertion that employees did not know what they voted for as a defense, he, as the shop steward, appears to believe that no agreement was reached. Therefore, it is essential for stability of the collective-bargaining relationship, that any doubts about whether a contract exists be put to rest. This can only be done in my view by an authorized representative of Respondent executing the agreement submitted to it by Charging Party.[2]

Respondent also defends its refusal to sign the contract on the grounds that Charging Party has interpreted certain provisions of the agreement differently than Respondent. Respondent argues that by signing the contract as presented, it would be acquiescing in Charging Party's interpretation of the agreement, and might prejudice Respondent's position in any grievance that it might file.[3]

I find this defense to be totally without merit. The fact that there may be disagreements as to the interpretation of any of the terms of contract agreed to, is clearly no defense to a refusal to execute the agreement. *Furniture Workers Local 36 (Telescope Furniture)*, 281 NLRB 1263, 1272 (1986). The terms of the agreement are clear and unambiguous, and conform to the terms of the MOA. Respondent is therefore obligated to execute the document as presented. *Fayard*, supra at 27; *Duquoin*, supra at 483. Questions concerning the interpretation or implementation of the agreement should be relegated to the grievance procedure of the contract. Respondent has cited no authority in support of its rather novel position that by signing the agreement, it is acquiescing in Charging Party's interpretation of each and every clause therein. I do not believe that Respondent is correct, but in any event conclude that its argument in that regard is properly addressed to the arbitrator.

Therefore, I reject Respondent's purported defenses to its refusal to execute the agreement reached between it and Charging Party. Accordingly, based on the foregoing, I conclude that Respondent has violated Section 8(b)(3) of the Act, by failing to do so.

CONCLUSIONS OF LAW

1. Charging Party is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. By failing and refusing since on or about November 8, 1990, to sign the collective-bargaining agreement previously agreed to with Charging Party, Respondent has violated Section 8(b)(3) of the Act.

4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Local 617, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, Jersey City, New Jersey, its officers, agents, and representatives, shall

1. Cease and desist from failing and refusing to sign the collective-bargaining agreement submitted to it by Christian Salvesen Distribution Service on or about November 8, 1990.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, forthwith execute the collective-bargaining agreement submitted to it by Christian Salvesen Distribution Service on or about November 8, 1990.

(b) Post at its business offices and meeting halls copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized rep-

[2] It is, of course, not essential that Ryan himself sign the agreement. While Charging Party did insert a line in the agreement for Ryan to sign, its attorney correctly asserted that it has no right to tell Respondent who must sign the agreement on its behalf, and did not intend to and does not insist that Ryan sign the agreement.

[3] In this connection, while Charging Party has adhered to its interpretation of the contract, and enforced the contract in that manner, Respondent has not filed a grievance over any of these matters.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

resentative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and return to the Regional Director for Region 22 sufficient copies of the notice for posting by Christian Salvensen Distribution Center, if willing, at all places where notices to employees are customarily posted.

(d) Notify the Regional Director for Region 22 in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.